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In re Application of
ARQUINT et al.
Serial No.: 10/523,933
PCT App. No.: PCT/DE03/02548
Int'l Filing Date: 29 July 2003
Priority Date: 08 August 2002
Attorney Docket No.: 32860-000850/US
For: RADICALLY CROSSLINKABLE
HYDROGEL COMPRISING LINKER GROUPS

DECISION ON
PETITION UNDER
37 CFR 1.137(b)

This is a decision on applicants' "Petition for Revival of an Application for Patent Abandoned Unintentionally Under 37 CFR 1.137(b)", filed on 11 May 2006 in the United States Patent and Trademark Office (USPTO).

BACKGROUND

On 29 July 2003, applicant filed international application PCT/DE03/02548, which claimed priority of an earlier German application filed 08 August 2002. The deadline for entry into national stage expired thirty months after the priority date or by midnight on 08 February 2005. Thereafter, the application was abandoned for failure to enter national stage in the U.S. before the expiration of the thirty month period.

On 07 February 2005, applicants filed a Transmittal Letter to the United States Designated/Elected Office (DO/EO/US) Concerning a Filing Under 35 U.S.C. 371 (Form PTO 1390) along with, *inter alia*, the basic national fee.

On 15 August 2005, a Notification of Missing Requirements (Form PCT/DO/EO/905) was mailed to applicants indicating that an oath or declaration, in compliance with 37 CFR 1.497(a) and (b), was required. On 3 October 2005, applicants filed an executed declaration.

On 23 January 2006, a Notification of Defective Response (Form PCT/DO/EO/916) was mailed regarding the declaration and indicating that the signature of inventor Gotz was missing and that inventor Nuss was not listed in the international application.

On 11 May 2006, applicant filed the instant petition to revive along with an explanation of the signature of the inventor.

DISCUSSION

A petition under 37 CFR 1.137(b) must be accompanied by (1) a proper response unless it has

been previously submitted, (2) the fee required by law for revival of an unintentionally abandoned application (1.17(m)), and (3) a statement that the "the entire delay in filing the required reply from the due date for the required reply until the filing of a grantable petition under 37 CFR 1.137(b) was unintentional".

With respect to Items (2) and (3), applicant's statement that "the entire delay in filing the required reply from the due date for the required reply until the filing of a grantable petition under 37 CFR 1.137(b) was unintentional" meets the requirements of 37 CFR 1.137(b)(3). The required petition fee of \$1500 has also been paid.

With regard to Item (1), the proper reply is a declaration or oath, in compliance with 37 CFR 1.497(a) and (b), executed by the inventors as listed on the international application. The declaration submitted on 11 May 2006 contained three identical sheets of page 3 signed by different inventors. The declaration is not properly executed. It appears that either the attorney pieced together two separate complete declarations or the inventors were presented with an incomplete declaration. Thus, the requirements of 37 CFR 1.497 have not been met. What is required is one declaration where all inventors have signed or two separate complete declarations executed in compliance with 37 CFR §1.497(a) & (b).

Furthermore, the published international application identifies the inventor as Hannelore Gotz. The declaration indicated the name of the fourth inventor as "Hannelore Gotz" however, on Page 3, the declaration identifies and is signed by "Hannelore Nuss". Counsel provides the explanation that Ms. Gotz was married and changed her name to Hannelore Nuss. This is insufficient to accept the declaration as filed.

A petition under 37 CFR 1.182 is required to accept the change in the name of the inventor. As explained in MPEP 605.04(c), applicant must provide a signed affidavit setting forth both names and the procedure whereby the change of name was effected, or a certified copy of the court order. Here, applicant should submit the statement of Hannelore Gotz regarding her respective change of name. The declaration, indicating Hannelore Nuss as an inventor, is not in compliance with 37 CFR 1.497 and unacceptable.

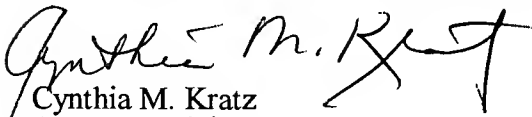
The requirements of 37 CFR 1.497(a) & (b) have not been met and the declaration is unacceptable. Item (1), a proper reply, has not been submitted and the petition to revive is dismissed at this time. The proper reply is a newly executed declaration by all inventors, along with a petition under 37 CFR 1.182 to change the name of inventor Gotz.

CONCLUSION

For the reasons stated above, the petition to revive under 37 CFR 1.137(b) filed 11 May 2006 in the above-captioned application is **DISMISSED**.

The application remain abandoned. The proper reply is a newly executed declaration by all inventors, along with a petition under 37 CFR 1.182 to change the name of inventor Gotz.

Please direct further correspondence with respect to this matter to Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.


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